IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 770 OF 2006
IN
WRIT PETITION NO. 1344 OF 2005

M/s. Kalki Enterprises ....Petitioners.

V/s

Municipal Corporation of Greater
Mumbai & Ors. ....Respondents.

Ms Archana Joshi with Mr. K.K. Singhvi for MCGM - Applicant in support of the Notice of Motion.

Mr. R.M. Nakhwa with Mr. V.V. Dhavan for Petitioners.

CORAM: V.M. KANADE, J.
DATE : 4th April, 2007.

P.C.:

1. This Notice of Motion is taken out by the Municipal Corporation for vacating the interim relief which has been granted by this Court by order dated 6th May, 2005. This Notice of Motion is taken out in view of the Division Bench Judgment of this Court dated 27th March, 2006 in Municipal Corporation of Greater Mumbai v. Dalamal Tower Premises

Co-operative Society Limited reported in **2006 (3) Bom. C.R. 557** in which similar issue came to be decided in favour of the Municipal Corporation and the revised assessment was upheld.

2. Against the said judgment and order, Special Leave Petition was filed before the Supreme Court and leave to appeal was granted and the following interim directions were issued:-

> "The recovery on the basis of revised enhanced assessment from the appellants is stayed subject to the condition that besides the undisputed amount, the appellants also deposit with the respondent - Corporation fifty per cent of the difference between the assessment and the revised enhanced assessment within a period of six weeks and also give an undertaking that in case the appeal is dismissed and revised assessment is upheld, the balance amount would be paid with interest at the rate of 6-1/4%. Likewise, the Principal Assessor and Collector, on

> behalf of the Commissioner and the Corporation, will file an undertaking that in case the appeals are allowed and revised assessment is set aside, fifty per cent of the payment made on the basis of the revised assessment would be refunded to the appellants with the same rate of interest i.e. 6-1/4%."

3. In view of the order that has been passed by the Supreme Court on 11th September, 2006 in the aforesaid case, appropriate orders will have to be passed in this case modifying the interim order dated 6th May, 2005.

4. Under the circumstances, the said order dated 6th May, 2005 is modified and it is directed that Petitioners to deposit with the Respondent - Corporation 50% of the difference between the assessment and the revised enhanced assessment within a period of six weeks and Petitioners also to give an undertaking that in case the appeal is dismissed and the revised assessment is upheld, the balance amount would be paid with interest @ 6-1/4% per annum. Similarly, the Principal Assessor and Collector on behalf of the

Commissioner & Corporation will file an undertaking that in case the appeals are allowed and revised assessment is set aside 50% of the payment made on the basis of revised assessment will be refunded to the Petitioners with the same rate of interest i.e. 6-1/4% per annum.

5. The Notice of Motion is accordingly disposed of.

(V.M. KANADE, J.)